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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5626 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - No.

JJJ

2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge? - No.

INDRAJIT VALLABHBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR GM JOSHI for Petitioners

Mr.K.M.Mehta, Assistant GOVERNMENT PLEADER

for Respondent Nos. 1, 2 and 4

MR KS JHAVERI for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 21/11/97

ORAL JUDGEMENT

Rule. Mr.K.M. Mehta, Assistant Government Pleader, waives service of rule on behalf of respondents Nos. 1, 2 and 4 and Mr.K.S. Jhaveri waives service of rule on behalf of respondent No.3. With the consent of parties, the matter is finally disposed of today.

Petitioners are Councillors of Anand Municipality. They have filed this petition, praying for the issuance of a writ of mandamus, directing the State Government to appoint an Officer belonging to the cadre of Gujarat Administrative Service as Chief Officer of the Anand Municipality as a full time Chief Officer. Previous Chief Officer of Anand Municipality retired from service on 31st July, 1997.

One Shri R.H. Upadhyay, who is holding the post of In-charge Chief Officer, filed a reply affidavit on behalf of respondent No.3, the Anand Municipality. It is stated therein that by order dated 25th July, 1997, one Shri P.C. Thakore was appointed as In-charge Chief Officer and, later, the deponent, Shri Upadhyay, who is eligible for appointment as Deputy Collector on account of his having completed 8 years of service in Grade II, was appointed as In-charge Chief Officer by the Collector. Thus, according to Shri Upadhyay, since the Collector has appointed eligible person as Chief Officer of the Nagarpalika, no further order is called for.

Learned Assistant Government Pleader made available to us parawise remarks obtained by him from the Government. The stand taken therein is to the following effect :-

Prior to Gujarat Municipalities (Amendment) Act, 1994, appointment of Chief Officer was made by respective Municipalities as per provisions of Section 47(1) of the Gujarat Municipalities Act, 1963. By the amending Act of 1994, Section 47A was introduced and as per that, powers of appointment of Chief Officer are vested in Government. Government have constituted Gujarat State Municipal Chief Officers' Service as per Government Notification dated 26.12.1994. Government made Gujarat State Municipal Chief Officers' Service (Recruitment, Absorption and Conditions of Service) Rules, 1996, which were finally issued by Notification dated 21.6.1997. As on today, the Officers are borrowed on deputation basis from Revenue Department and

Panchayats and Rural Housing Department as per the provision contained in Rule 4(6) of Gujarat State Chief Officers' Service (Recruitment, Absorption and Conditions of Service) Rules, 1996. All possible efforts are being made to man the post of Chief Officer by Deputy Collector in the Municipalities having population of one lakh and above. It is also stated that due to paucity of Deputy Collectors, it is not possible to fulfil all the requirements.

Government have also stated that Collector, Kheda has given charge of Anand Municipality to Mamlatdar, Anand and the incumbent is having eight years' experience as Mamlatdar. He is also an Executive Magistrate and so competent enough to discharge his duty as Chief Officer. Additional charge was handed over as a purely temporary measure. As and when full time Officers are made available by concerned Departments, full time chief Officer will be posted in Anand Municipality.

The Chief Officer, Anand Municipality, retired from service on superannuation on 31st July, 1997. The vacancy thus created has not been regularly filled up. Post of a regular Chief Officer is highly essential for the proper functioning of Anand Municipality. Since Government has notified Gujarat State Municipal Chief Officers' Service (Recruitment, Absorption and Conditions of Service) Rules, 1996 on 21.6.1997, appointment of Chief Officer as per that Rules, we are certain, can be made without any difficulty. Government are, therefore, directed to fill up the vacancy of Chief Officer in Anand Municipality on regular basis, in accordance with law, as expeditiously as possible, at any rate, within a month from the date of receipt of a copy of this judgment.

Special Civil Application is disposed of in the above terms. Rule is made absolute as indicated above.

Direct service is permitted.

(apj)